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C O N F I D E N T I A L SECTION 01 OF 02 TIRANA 000087

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SUBJECT: LUSTRATION LAW: DON'T COUNT ON THE CONSTITUTIONAL COURT

Classified By: Ambassador John L. Withers, II, reasons 1.4 (b) and (d)

11. (C) SUMMARY: Despite the growing number of NGOs, political parties and associations that have filed challenges to the Lustration Law with the Constitutional Court, Post is increasingly seeing strong anecdotal evidence that the Court will not overturn the Law - in part a result of repeated statements by Berisha proxies in Parliament claiming that that the government will ignore any Court ruling because of "conflicts of interest" - statements largely aimed at convincing the court that resistance to the law is pointless and that it will take effect no matter what. One source close to the Constitutional Court told the Embassy that four of the nine justices on the Court have said they will recuse themselves from hearing any challenge to the Lustration Law, while other observers believe that the other justices on the Court lack the courage to stand up to PM Berisha and overturn the law. Overall, it is clear that the threat of the Lustration Law has cast a wide pall over the entire justice sector, with judges and prosecutors reluctant to challenge the law and perhaps shading other rulings in an effort to not incur the wrath of PM Berisha. Nothing other than an outright overturning of the law by the Constitutional Court - an outcome highly unlikely - will relieve the enormous pressure on the entire judicial sector. Our public message after PM Berisha's meetings with USG leaders in Washington is seen as a way key indicator of our resolve on the Lustration Law and independence of the judiciary. END SUMMARY.

Lustration Law Effective Without Even Going Into Effect

12. (C) The Lustration Law, although not yet fully implemented, appears to have cast a wide shadow over judges and prosecutors, who are fearful that any actions they take now could later be punished via the Lustration Law. Numerous observers have told the Embassy that members of the Constitutional Court and other judges potentially affected by the Lustration Law are reluctant to challenge the law minus personal guarantees that they will not later lose their jobs or be otherwise punished. Although statements by the Council of Europe, EU, U.S., OSCE and others have provided a good deal of political cover for the Constitutional Court and prosecutors, some observers believe that these statements will not be enough to convince judges and prosecutors to risk their jobs and political futures. Prosecutors have also told the Embassy that the Lustration Law has had a serious demoralizing effect on the prosecutorial corps, particularly following the resignation of lead Gerdec prosecutor Zamir Shtylla, who reportedly cut a deal with Berisha that allowed Shtylla to resign as lead prosecutor but still keep his job as a line prosecutor.

¶3. (C) On February 5 the Czech Ambassador to Albania told Ambassador Withers that her sources close to the Constitutional Court had said that perhaps five of the Court's nine justices are "leaning against" the Lustration Law. However, the Czech Ambassador added that the Chairman of the Court, who is well known to be a longtime Berisha loyalist, has wide authority allowing him to delay any Court review of the Lustration Law almost indefinitely. Any such delay will only serve Berisha's purposes, as only outright overturning of the law will give judges and prosecutors the assurances they need to rule on politically sensitive cases without fear of reprisals.

The Damage Is Already Done

¶4. (C) COMMENT: Although the review process for the Lustration Law could well drag on for months, perhaps delaying full implementation, even a suspension of the law by the Constitutional Court pending a full review of the Law is unlikely to reverse the Law's already considerable negative effects - something only a total overturning of the law can do. Every day Post hears further anecdotal evidence that judges and prosecutors are demoralized and running scared, afraid of taking actions that may later get them in trouble with the PM. To be sure, not every judge and prosecutor in key positions is subject to the Lustration Law, but enough are potentially subject to removal under the Law to either paralyze the courts or influence important decisions. Nevertheless, international pressure on the GOA to honor a Constitutional Court ruling and to not intimidate the courts

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will still play a key role in supporting Albania's fragile independent institutions and assuring those judges and prosecutors who are sitting on the fence that we have not abandoned them. The judicial community is looking to the message that emerges from PM Berisha's meetings with U.S. leaders in Washington, perhaps especially Secretary Clinton, as a lead indicator of U.S. resolve on the Lustration Law and upholding the independence of the judiciary.
WITHERS